No. 79-1777

Supreme Court
FILE
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MICHAEL RODAK, JR.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1979

COMPLETE AUTO TRANSIT, INC., et al.,
Petitioners,

-vs-

DANNY REIS, et al.,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

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PETITION FOR CERTIORARI FILED MAY 7, 1980
CERTIORARI GRANTED OCTOBER 14, 1980

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1200 WEST FORT STREET, DETROIT, MICHIGAN 48226 — (313) 963-9310

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OF THE UNITED STATES
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-VS-

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THE FOLLOWING OPINIONS, DECISIONS, JUDGMENTS AND ORDERS HAVE BEEN OMITTED IN PRINTING THIS APPENDIX BECAUSE THEY APPEAR ON THE FOLLOWING PAGES IN THE APPENDIX TO THE PRINTED PETITION FOR CERTIORARI:

A. OPINION OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FEBRUARY 8, 1980: 614 F.2d 1110 ..... 1a(App.)

B. JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT, FEBRUARY 8, 1980: UNREPORTED ..... 14a(App.)

C. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION IN NO. 76-40057, JUNE 8, 1977; UNREPORTED ..... 15a(App.)

D. MEMORANDUM OPINION AND ORDER OF THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN, SOUTHERN DIVISION IN NO. 76-40057, AUGUST 30, 1977: UNREPORTED ..... 19a(App.)

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* The designation "App." denotes that the page number which it follows appears in the Appendix to the Petition for Certiorari.

I. RELEVANT DOCKET ENTRIES

IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN SOUTHERN DIVISION

Complete Auto Transit, Inc.,
Plaintiff,

-vs-

Danny Reis, Larry Keller, Virgil Williams, John Sealy and John Lamb and other members and persons represented by Local Union 332 who are employed by Plaintiff at its Flint, Michigan facility.
Defendants.

Civil Action No. 76-40057

Automobile Carriers, Inc.
Plaintiff,

-vs-

Delbert Addison, Michael Boudreau, Donald Sears, and Gerald Supal, and other persons represented by Local Union No. 332 who are employed by Plaintiff at its Flint, Michigan facility.
Defendants.

Civil Action No. 76-40059

F. J. Boutell Driveaway Co., Inc.,
Plaintiff,

-vs-

Joseph Hardacre, Carl Letts, Herman McCullough, Dennis Stockinger and Edward Warner, and other members and persons represented by Local Union No. 332 who are employed by Plaintiff at its Flint, Michigan facility, and Local Union No. 332, affiliated with the International Brotherhood of Teamsters,
Defendants.

Civil Action No. 76-40060

Relevant Docket Entries

DATE	PROCEEDINGS
1976	
June 9,	Complaint of Plaintiff Complete Auto Transit, Inc. filed.
June 14,	Motion of Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc. to Consolidate Case No. 76-40059 and Case No. 76-40060 with Case No. 76-40057 filed by Plaintiffs Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.
June 14,	Order granting Plaintiffs' Motion for Consolidation.
June 16,	First Amended Complaints of Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.
July 15,	Answer of Individual Defendants.
July 15,	Answer of Individual Defendants to Plaintiffs' Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.'s First Amended Complaint.
1977	
Mar. 25,	Motion to Dismiss filed by Individual Defendants.
Apr. 14,	Response by Plaintiffs' Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.'s to Motion to Dismiss.
June 9,	Order and Opinion granting Defendants' Motion to Dismiss.
June 20,	Motion for Reconsideration by Plaintiffs Complete Auto Transit, Inc., Automobile Carriers, Inc. and F. J. Boutell Driveaway Co., Inc.

Relevant Docket Entries

DATE 1977	PROCEEDINGS
July 8,	Memorandum of Individual Defendants in Opposition to Plaintiffs' Motion for Reconsideration.
Aug. 30,	Order and Opinion denying Motion for Reconsideration.
Dec. 7,	Final Order dismissing consolidated action entered.
Dec. 14,	Judgment for Defendants entered.

Relevant Pleadings, Charges, Findings or Opinions

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057

II. RELEVANT PLEADINGS, CHARGES, FINDINGS OR OPINIONS*

A. COMPLAINT

Now comes COMPLETE AUTO TRANSIT, INC., by and through its attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, and hereby complains against the Defendants as follows:

1. This action arises under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185), as Amended, which states in part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

2. Plaintiff, COMPLETE AUTO TRANSIT, INC., is a Michigan corporation with its principal place of business at Southfield, Michigan, which operates numerous terminal facilities throughout the Midwestern and Southern United States, including that located at G-3201 David Street, Flint, Michigan, in which it has invested a substantial sum of money for both terminal facilities and equipment. Plaintiff is a contract carrier operating pursuant to a Permit issued by the Interstate Commerce Commission and is engaged in the delivery, by motor carrier, of motor vehicles received from

* The relevant pleadings in No. 76-40059 and No. 76-40060 have not been included since they are similar to those filed in No. 76-40057.

General Motors Corporation at the aforementioned terminal facilities to dealerships throughout the Midwesterm and Southern United States. Plaintiff is thus engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185, and is also an "Employer" within the meaning of the same Act.

3. Local Union No. 332 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union") is a labor organization and has been and is the exclusive bargaining agent for a unit of drivers, yardmen and mechanics employed at Plaintiff's Flint, Michigan terminal facilities.

4. Defendants are members of the Union and are employed by Plaintiff at its Flint, Michigan facilities as drivers. Other unnamed defendants are members and persons represented by the Union and employed by Plaintiff at its Flint, Michigan facilities as drivers, yardmen and in other capacities and are so numerous that they cannot be named individually as defendants in this suit, but the bringing of the above-entitled action against the named defendants will sufficiently acquaint all defendants with the action herein brought and the relief sought.

5. Plaintiff and the Union are signatory to a collective bargaining agreement which is for the period September 1, 1973 through May 31, 1976. A copy of said agreement is attached hereto as Exhibit "A".

6. The agreement between Plaintiff and the Union provides, in part, the following provision in Article 7, Section 1, therein:

> "The Unions and Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employee * * * without first using all possible means of settlement, as pro-

vided in this Agreement, of any controversy which might arise."

Article 7 therein also provides a specific method of resolving any disputes which may arise between Plaintiff and the Union with the exception of certain specific matters, none of which are involved herein.

7. Plaintiff delegated the authority and power to negotiate a collective bargaining agreement for their entire trucking operation, including the above named terminal, the NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION, a multi-employer bargaining association which negotiates the terms and conditions of the National Master Automobile Transporters Agreement and its various supplemental agreements with the TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTER INDUSTRY NEGOTIATING COMMITTEE, (hereinafter "The Committee").

8. Local Union No. 332 has delegated the authority and power to negotiate the above-described collective bargaining agreement on its behalf and on behalf of all its members to The Committee.

9. Article 34 of Plaintiff's Exhibit "A" provides in part as follows:

"Section 1. This Agreement shall be in full force and effect from September 1, 1973, to and including May 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

"Section 2. Where no such cancellation or termination notice is served and the parties desire to

continue said Agreement but also desire to negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to May 31, 1976, or May 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

"Section 3. Revisions agreed upon or ordered shall be effective as of June 1, 1976, or June 1 of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon."

10. Plaintiff's Exhibit "A" remains in full force and effect for the reason that no written notice of desire to cancel or terminate the Agreement was served by either party in accordance with Article 34, Section 2, of Plaintiff's Exhibit "A".

11. Furthermore, Article 7, Section 2(a), of Plaintiff's Exhibit "A" states in part:

> "The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement."

Relevant Pleadings, Charges, Findings or Opinions

12. On May 21, 1976, representatives of the Committee and National Automobile Transporters Labor Division entered into an agreement whereby the National Master Automobile Transporters Agreement and all Supplements and Riders thereto were extended indefinitely. A duplicate original of that agreement is attached hereto as Plaintiff's Exhibit "B".

13. On June 8, 1976, at approximately 3:30 P.M., named and unnamed defendants commenced an unlawful refusal to work constituting a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility, which continues at the present time, contrary to the provisions of Article 7, of the Agreement between Plaintiff and the Union. The facts concerning the aforesaid work stoppage are attached hereto in the Sworn Affidavit of Robert Wright and made a part hereof as if set forth herein at length.

14. On June 8, 1976, Ted Wiedemann, Vice President in charge of Operations, offered on behalf of the Plaintiff, to resolve any and all disputes arising between Plaintiff and Plaintiff's employees, by utilizing the grievance machinery as provided in Article 7 of the aforementioned Agreement attached hereto as Exhibit "A". This offer was made to Roy Ashby, Business Representative of the Union.

15. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants herein without the aid and assistance or authorization of the Union; and the unlawful refusal of Defendants to perform work constitutes an unauthorized or wildcat strike.

16. The Defendants, by their participation in the unlawful work stoppage, are personally liable to the Plaintiff for any and all damages arising out of the work stoppage, including, but not limited to, lost profits, overhead, and attorneys fees.

Relevant Pleadings, Charges, Findings or Opinions

17. Plaintiff is prepared to resolve and settle any disputes as may exist that it has with the Union or Defendants arising out of the Agreement in the manner provided in the aforesaid Agreement.

18. Plaintiff has at all times fully performed its obligations under the Agreement. However, notwithstanding Plaintiff's efforts the Defendants herein are currently participating in or aiding and abetting or encouraging an unlawful refusal to work, which is causing a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility.

19. The aforementioned work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility has and is continuing to cause irreparable harm to Plaintiff and its customer, General Motors Corporation. Continuation of the aforementioned work stoppage and tie-up of equipment will cause irreparable harm to Plaintiff's relationship with General Motors Corporation since it has resulted in Plaintiff's failure to perform its legal obligations as a contract carrier to General Motors Corporation. Moreover, continuation of the aforementioned work stoppage and tie-up of equipment will cause General Motors to divert business originally tendered Plaintiff to other motor carriers, thus causing further irreparable injury to Plaintiff.

20. The aforementioned unlawful work stoppage and tie-up of equipment will continue unless relief is granted and the aforementioned work stoppage and tie-up of equipment is restrained by this Court.

21. With respect to each item of relief sought herein, greater injury will be inflicted upon the Plaintiff by the denial thereof then would be inflicted upon the Defendants by the granting thereof: that in fact, no injury can result to the Defendants by requiring them to desist from the commission of such acts which are unlawful and which the Defendants have no right to presume to do, and the granting of the relief sought herein will not deprive the Defen-

dants or any benefit to which they are entitled and merely will prevent them from performing acts which are in violation of the contract and the policy of the National Labor Relations Act.

22. The character and extent of injury to the Plaintiff is such that the Plaintiff will suffer substantial and serious loss of business and customer patronage and will suffer immediate, substantial, and irreparable injury such that damages cannot adequately compensate for the same. Plaintiff has no adequate remedy at law, and Plaintiff will continue to suffer immediate, substantial and irreparable injury inless relief is granted and the Defendants are restrained and enjoined from continuing the unlawful acts herein set forth.

WHEREFORE, Plaintiff prays judgment:

1. That Defendants and each of them and all persons in active concert or participation with the Defendants or any of them be temporarily and permanently enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiff in breach of the collective bargaining agreement between the parties.

B. From concertedly refraining from performing their services at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiff's employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in support of any strike or work stoppage in breach of the collective bargaining agreements between the parties.

2. For a mandatory injunction issued to Defendants and each of them to specifically perform the collective bargaining agreement and to require Defendants and each of them to terminate the existing strike, work stoppage and concerted refusal to perform services, to return to work and resume the performance of their services for the Plaintiff, and to submit any dispute to the grievance machinery provided for in the collective bargaining agreement.

3. That the Plaintiff be ordered to comply with its obligation to enter into arbitration with the Local Union as required by the attached collective bargaining agreement.

4. That the Court retain jurisdiction of this action pending final resolution of such disputes as may exist for the purpose of giving Plaintiff such further relief as may be necessary.

5. That the Court award damages against the Defendants, in their individual capacity, for all losses arising out of the unlawful work stoppage and for attorneys fees.

6. That Plaintiff obtain judgment for such other and further relief as may be equitable and just, together with costs.

Respectfully submitted,
R. Ian Hunter and C. John Holmquist
MATHESON, BIENEMAN, PARR, SCHULER & EWALD
100 West Long Lake Road - Suite 102
Bloomfield Hills, Michigan 48013
Phone: (313) 645-9600
By R. Ian Hunter

Dated: June 9, 1976

(Exhibits omitted in printing)
(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057

B. FIRST AMENDED COMPLAINT

Now comes COMPLETE AUTO TRANSIT, INC., by and through its attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, and hereby complains against the Defendants as follows:

1. This action arises under Section 301 of the Labor Management Relations Act (29 U.S.C.A. 185), as Amended, which states in part:

> "(a) Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this chapter or between such labor organizations, may be brought in any District Court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties."

2. Plaintiff, COMPLETE AUTO TRANSIT, INC., is a Michigan corporation with its principal place of business at Southfield, Michigan, which operates numerous terminal facilities throughout the Midwestern and Southern United States, including that located at G-3201 David Street, Flint, Michigan, in which it has invested a substantial sum of money for both terminal facilities and equipment. Plaintiff is a contract carrier operating pursuant to a Permit issued by the Interstate Commerce Commission and is engaged in the delivery, by motor carrier, of motor vehicles received from

General Motors Corporation at the aforementioned terminal facilities to dealerships throughout the Midwestern and Southern United States. Plaintiff is thus engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185, and is also an "Employer" within the meaning of the same Act.

3. Local Union No. 332 affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America (hereinafter referred to as the "Union") is a labor organization and has been and is the exclusive bargaining agent for a unit of drivers, yardmen and mechanics employed at Plaintiff's Flint, Michigan terminal facilities.

4. Defendants are members of the Union and are employed by Plaintiff at its Flint, Michigan facilities as drivers. Other unnamed defendants are members and persons represented by the Union and employed by Plaintiff at its Flint, Michigan facilities as drivers, yardmen and in other capacities and are so numerous that they cannot be named individually as defendants in this suit, but the bringing of the above-entitled action against the named defendants will sufficiently acquaint all defendants with the action herein brought and the relief sought.

5. Plaintiff and the Union are signatory to a collective bargaining agreement which is for the period September 1, 1973 through May 31, 1976. A copy of said agreement is attached hereto as Exhibit "A".

6. The agreement between Plaintiff and the Union provides, in part, the following provision in Article 7, Section 1, therein:

> "The Unions and Employers agree that there shall be no strike, tie-up of equipment, slowdowns or walkouts on the part of the employee * * * without first using all possible means of settlement, as pro-

vided in this Agreement, of any controversy which might arise."

Article 7 therein also provides a specific method of resolving any disputes which may arise between Plaintiff and the Union with the exception of certain specific matters, none of which are involved herein.

7. Plaintiff delegated the authority and power to negotiate a collective bargaining agreement for their entire trucking operation, including the above named terminal, the NATIONAL AUTOMOBILE TRANSPORTERS LABOR DIVISION, a multi-employer bargaining association which negotiates the terms and conditions of the National Master Automobile Transporters Agreement and its various supplemental agreements with the TEAMSTERS NATIONAL AUTOMOBILE TRANSPORTER INDUSTRY NEGOTIATING COMMITTEE, (hereinafter "The Committee").

8. Local Union No. 332 has delegated the authority and power to negotiate the above-described collective bargaining agreement on its behalf and on behalf of all its members to The Committee.

9. Article 34 of Plaintiff's Exhibit "A" provides in part as follows:

"Section 1. This Agreemnet shall be in full force and effect from September 1, 1973, to and including May 31, 1976, and shall continue from year to year thereafter unless written notice of desire to cancel or terminate the Agreement is served by either party upon the other at least sixty (60) days prior to date of expiration.

"Section 2. Where no such cancellation or termination notice is served and the parties desire to continue said Agreement but also desire to

negotiate changes or revisions in this Agreement, either party may serve upon the other a notice at least sixty (60) days prior to May 31, 1976, or May 31 of any subsequent contract year, advising that such party desires to revise or change terms or conditions of such Agreement.

"Section 3. Revisions agreed upon or ordered shall be effective as of June 1 1976, or June 1 of any subsequent contract year. The respective parties shall be permitted all legal or economic recourse to support their requests for revisions if the parties fail to agree thereon."

10. Plaintiff's Exhibit "A" remains in full force and effect for the reason that no written notice of desire to cancel or terminate the Agreement was served by either party in accordance with Article 34, Section 2, of Plaintiff's Exhibit "A".

11. Furthermore, Article 7, Section 2(a), of Plaintiff's Exhibit "A" states in part:

> "The provisions of this Article shall continue to apply during that period of time between the expiration of this Agreement and the conclusion of the negotiations or the effective date of the successor Agreement, whichever occurs later. It is understood and agreed that failure by the International Brotherhood of Teamsters, Teamsters National Automobile Transporters Industry Negotiating Committee, Area Conferences, and/or the Joint Councils to authorize a strike by a Local Union shall not relieve such Local Union of liability for a strike authorized by it and which is in violation of this Agreement."

12. On May 21, 1976, representatives of the Committee and National Automobile Transporters Labor Division entered into an agreement whereby the National Master Automobile Transporters Agreement and all Supplements and Riders thereto were extended indefinitely. A duplicate original of that agreement is attached hereto as Plaintiff's Exhibit "B".

13. On June 8, 1976, at approximately 3:30 P.M., named and unnamed defendants commenced an unlawful refusal to work constituting a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility, which continues at the present time, contrary to the provisions of Article 7, of the Agreement between Plaintiff and the Union. The facts concerning the aforesaid work stoppage are attached hereto in the Sworn Affidavit of Robert Wright and made a part hereof as if set forth herein at length.

14. On June 9, 1976, Plaintiff herein filed a request for injunctive relief in this Court in Civil Action No. 76-40057 against all of the above-named Defendants, except for Local Union 332, and requested a temporary restraining order. This Court on June 9, 1976 denied the request for the ex parte temporary restraining order and issued an Order to Show Cause Why a Preliminary Injunction should not be issued for Monday, June 14, 1976, at 2:00 p.m. At that time a hearing was conducted by this Court at the conclusion of which it issued an opinion from the bench denying the request by Plaintiff for a Preliminary Injunction by finding, in part, that the strike involved a dispute between Defendants and their union and, therefore, did not constitute an arbitrable issue. Based upon this finding the Court held that it was not empowered to issue injunctive relief pursuant to the "*Boys Market*" decision reached by the United States Supreme Court in 398 U.S. 235.

15. On June 15, 1976, representatives of Plaintiff were advised by representatives of the National Automobile

Transporters Labor Division that the tentative agreement reached by representatives of the National Automobile Transporters Labor Division and the Teamsters National Automobile Transporters Industry Negotiating Committee had been rejected by the affected membership including Defendants. Accordingly, the aforementioned representatives are reconvening negotiations for the purpose of reaching another tentative agreement.

16. On Tuesday, June 15, 1976, a representative of Local 332, Roy Ashby, as well as unnamed Defendants, approached Ralph Thompson, Vice President of Plaintiff, with a written agreement setting forth the demands of the striking employees of the Plaintiff as well as other companies wherein it demanded that in exchange for returning to work the striking employees shall be assured of no discipline, reprisals, penalties or fines imposed against them by Plaintiff and the other companies on strike. A copy of this document is attached hereto as Plaintiff's Exhibit "C".

17. The aforementioned work stoppage and tie-up of equipment has been participated in, encouraged and caused by Defendants, other than Local 332, without the aid and assistance or authorization of Defendant Local 332 in its initial stages; provided, however, representatives of Local 332 have accompanied representatives of the other Defendants in submission of the proposed agreement attached hereto as Exhibit "C" and described in the affidavit of Ralph Thompson, which is attached hereto and incorporated herein.

18. Plaintiff is prepared to resolve and settle any disputes as may exist that it has with the Union or Defendants arising out of the Agreement in the manner provided in the aforesaid Agreement.

19. Plaintiff has at all times fully performed its obligations under the Agreement. However, notwithstanding Plaintiff's efforts the Defendants herein are currently par-

ticipating in or aiding and abetting or encouraging an unlawful refusal to work, which is causing a work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility.

20. The aforementioned work stoppage and tie-up of equipment at Plaintiff's Flint, Michigan facility has and is continuing to cause irreparable harm to Plaintiff and its customer, General Motors Corporation. Continuation of the aforementioned work stoppage and tie-up of equipment will cause irreparable harm to Plaintiff's relationship with General Motors Corporation since it has resulted in Plaintiff's failure to perform its legal obligations as a contract carrier to General Motors Corporation. Moreover, continuation of the aforementioned work stoppage and tie-up of equipment will cause General Motors to divert business originally tendered Plaintiff to other motor carriers, thus causing further irreparable injury to Plaintiff.

21. The aforementioned unlawful work stoppage and tie-up of equipment will continue unless relief is granted and the aforementioned work stoppage and tie-up of equipment is restrained by this Court.

22. With respect to each item of relief sought herein, greater injury will be inflicted upon the Plaintiff by the denial thereof then would be inflicted upon the Defendants by the granting thereof; that in fact, no injury can result to the Defendants by requiring them to desist from the commission of such acts which are unlawful and which the Defendants have no right to presume to do, and the granting of the relief sought herein will not deprive the Defendants of any benefit to which they are entitled and merely will prevent them from performing acts which are in violation of the contract and the policy of the National Labor Relations Act.

23. The character and extent of injury to the Plaintiff is such that the Plaintiff will suffer substantial and serious loss

of business and customer patronage and will suffer immediate, substantial, and irreparable injury such that damages cannot adequately compensate for the same. Plaintiff has no adequate remedy at law, and Plaintiff will continue to suffer immediate, substantial and irreparable injury unless relief is granted and the Defendants are restrained and enjoined from continuing the unlawful acts herein set forth.

WHEREFORE, Plaintiff prays judgment:

1. That Defendants and each of them and all persons in active concert or participation with the Defendants or any of them be temporarily and permanently enjoined and restrained as follows:

A. From engaging in any strike, work stoppage or concerted refusal to perform the normal duties of their employment with Plaintiff in breach of the collective bargaining agreement between the parties.

B. From concertedly refraining from performing their services at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equipment in breach of the collective bargaining agreement between the parties.

C. From inducing any of Plaintiff's employees to engage in a strike, work stoppage or concerted refusal to perform their services in breach of the collective bargaining agreement between the parties.

D. From engaging in picketing or mass assembly at Plaintiff's Flint, Michigan facility, Chesapeake and Ohio Railhead facility at the northwest corner of Dort and Maple and the old Arlan's parking lot at Bristol Road where the company stores its equip-

ment in support of any strike or work stoppage in breach of the collective bargaining agreements between the parties.

2. For a mandatory injunction issued to Defendants and each of them to specifically perform the collective bargaining agreement and to require Defendants and each of them to terminate the existing strike, work stoppage and concerted refusal to perform services, to return to work and resume the performance of their services for the Plaintiff, and to submit any dispute to the grievance machinery provided for in the collective bargaining agreement.

3. That the Plaintiff be ordered to comply with its obligation to enter into arbitration with the Local Union as required by the attached collective bargaining agreement.

4. That the Court retain jurisdiction of this action pending final resolution of such disputes as may exist for the purpose of giving Plaintiff such further relief as may be necessary.

5. That the Court award damages against the Defendants, in their individual capacity, for all losses arising out of the unlawful work stoppage and for attorneys fees.

6. That Plaintiff obtain judgment for such other and further relief as may be equitable and just, together with costs.

Respectfully submitted,
R. Ian Hunter and C. John Holmquist
MATHESON, BIENEMAN, PARR, SCHULER & EWALD
100 West Long Lake Road - Suite 102
Bloomfield Hills, Michigan 48013
Phone: (313) 645-9600
By (s) R. IAN HUNTER

Dated: June 16, 1976

(Exhibits omitted in printing)

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
EASTERN DISTRICT
NORTHERN DIVISION AT BAY CITY

(Title Omitted in Printing)
No. 76-40057

C. ANSWER

COMES NOW, Defendants, Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb, and all other Defendant members of Local Union Number 332 employed by Plaintiff (hereinafter all referred to as Defendant employees), by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and in response to Plaintiff's Complaint, replies as follows:

1. That in answer to Paragraph 1, Defendant employees admit the allegations contained therein.

2. That in answer to Paragraph 2, Defendant employees admit Plaintiff is engaged in interstate commerce within the meaning of the Labor Management Relations Act, 29 U.S.C.A. 185 and also an employer within the meaning of the Act. That in answer to the remaining allegations contained in Paragraph 2, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

3. That in answer to Paragraph 3, Defendant employees admit the allegations contained therein.

4. That in answer to Paragraph 4, Defendant employees admit that the named Defendants are members of the Union and are employed by the Plaintiff at its Flint, Michi-

gan, facility as drivers. That in answer to the remaining allegations contained therein, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

5. That in answer to Paragraph 5, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

6. That in answer to Paragraph 6, Defendant employees admit the allegations contained therein. Defendant employees affirmatively state, however, that at all material times herein, that no dispute existed between themselves individually or collectively and their employer, but that any and all disputes existed between the Defendant employees and their Union, Local No. 332, and that the disputes between Defendant employees and their Union are not subject to the provisions set forth in Article 7 and its subsections of the Labor Agreement.

7. That in answer to Paragraph 7, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

8. That in answer to Paragraph 8, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

9. That in answer to Paragraph 9, Defendant employees admit that Article 34 is as set forth and stated in Paragraph 9.

10. That in answer to Paragraph 10, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

11. That in answer to Paragraph 11, Defendant employees deny the allegations contained therein, inasmuch as they are untrue. The Defendant employees affirmatively state that the language set forth in Paragraph 11 is encompassed as only a part of and one of the provisions contained in Article 7, Section 2(a).

12. That in answer to Paragraph 12, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

13. That in answer to Paragraph 13, Defendant employees admit a work stoppage did occur at Plaintiff's Flint, Michigan, facility. That Defendant employees state that any determination of its lawfulness or unlawfulness of the refusal to work is a legal conclusion, and that such is not a proper allegation to plead in the Complaint in accordance with the Federal Rule of Civil Procedure Rule 8(a), (e) and 10(b). That insofar as it is concluded the aforementioned allegations are not legal conclusions, Defendant employees deny said allegation as untrue, and affirmatively state that at all material times herein they were engaged in concerted and protected activities. That Defendant employees deny that the work stoppage continues to the present time, inasmuch as that is untrue; Further, Defendant employees deny that the dispute could be settled and is a subject of the procedures set forth in Article 7 of the Collective Bargaining Agreement. That in answer to the remaining allegations contained therein, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond and therefore, leave Plaintiff to its proofs.

14. That in answer to Paragraph 14, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowlege or information with which to respond, and therefore, leave Plaintiff to its proofs.

15. That in answer to Paragraph 15, Defendant employees admit Local Union No. 332 did not aid, assist or authorize the work stoppage or a tie-up of any equipment. That with respect to the remaining allegations contained therein, they are legal conclusions and are not proper allegations to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it is concluded that the remaining allegations are not legal conclusions, Defendant employees deny said allegations as untrue and affirmatively state that at all material times herein they were engaged in concerted and protected activities.

16. That in answer to Paragraph 16, Defendant employees state that the allegations contained therein are legal conclusions and are not proper allegations to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it concluded, the allegations are not legal conclusions, Defendant employees deny the allegations contained therein as untrue and affirmatively state that at all material times herein, they were engaged in concerted and protected activities.

17. That in answer to Paragraph 17, Defendant employees deny that they had any dispute with Plaintiff. Further, Defendant employees state at all material times herein, that any and all existing disputes are with Defendant, Local Union No. 332. Defendant employees affirmatively

state that the disputes that they have with Defendant Union No. 332 are not any that arise out of the Agreement or subject to resolution by the procedures set forth in the Labor Agreement.

18. That in answer to Paragraph 18, Defendant employees neither admit nor deny the allegation that Plaintiff has at all times fully performed its obligations under the Agreement, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs. Defendant employees admit that a work stoppage did occur; However, Defendant employees deny that a work stoppage is presently occurring, inasmuch as it is untrue. That Defendant employees state the allegation concerning the lawfulness or unlawfulness of the refusal to work is a legal concluison and not a proper allegation to plead in the Complaint in accordance with the Federal Rules of Civil Procedure Rules 8(a), (e) and 10(b). That insofar as it is concluded, the allegations are not a legal conclusion, Defendant employees deny the allegation as untrue and affirmatively state at all material times herein, they were engaged in concerted and protected activities.

19. That in answer to Paragraph 19, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

20. That in answer to Paragraph 20, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient information and knowledge with which to respond, and therefore, leave Plaintiff to its proofs.

21. That in answer to Paragraph 21, Defendant employees deny the allegations contained therein, as they are untrue.

22. That in answer to Paragraph 22, Defendant employees deny the allegations contained therein, as they are untrue.

WHEREFORE, Defendant employees pray that this Honorable Court conclude and find:

1st. That Plaintiff has failed to state a cause of action against Defendant employees, and

2nd. That the Complaint be dismissed with prejudice against Defendant employees, and

3rd. That Defendant employees have fully complied with the Temporary Injunctive Order of this Court obtained by Plaintiff and that Defendant employees have returned to work, and

4th. That Plaintiff having obtained the Injunctive relief which it sought in the Complaint, is not entitled to any of the other relief requested in its Prayer for Relief, including monetary damages, costs and attorney fees, and

5th. That the Complaint be dismissed with prejudice, the issues having become moot, and

6th. That Defendant employees be entitled to any other such relief as may be equitable and just.

Respectfully submitted,

(s) Hiram S. Grossman, (P-14425)
DRAPER, DANIEL, RUHALA & SEYMOUR, P.C.
717 South Grand Traverse
Flint, Michigan 48502
Telephone: (313) 235-2581

DATED: July 12, 1976

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
NORTHERN DIVISION AT BAY CITY

(Title Omitted in Printing)
No. 76-40057

D. ANSWER TO FIRST AMENDED COMPLAINT

COMES NOW, Defendants, Danny Reis, Larry Keller, Virgil Williams, John Sealey and John Lamb, and all other Defendant members of Local Union No. 332 employed by Plaintiff (hereinafter referred to as Defendant employees), by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and in response to Plaintiff's First Amended Complaint, replies as follows:

That in answer to Paragraphs 1-13 and 18-23 of the First Amended Complaint, Defendant employees incorporates by reference as if fully and completely set forth its Answers to the original Complaint, in the following numerical order:

1. That in answer to Paragraphs 1-13 of the First Amended Complaint, Defendant employees' Answers to Paragraphs 1-13 of the original Complaint are incorporated by reference as if fully and completely set forth.

2. That in answer to Paragraphs 18-23 of the First Amended Complaint, Defendant employees' Answers to Paragraphs 17-22 of the original Complaint are incorporated by reference as if fully and completely set forth in the following numerical order, Paragraphs 18, 19, 20, 21, 22 and 23 of the First Amended Complaint as set forth in Defendant employees' Answers to Paragraphs 17, 18, 19, 20, 21 and 22 of the original Complaint.

14. That in answer to Paragraph 14, Defendant employees admit the allegations contained therein.

15. That in answer to Paragraph 15, Defendant employees neither admit nor deny the allegations contained therein, inasmuch as they lack sufficient knowledge or information with which to respond, and therefore, leave Plaintiff to its proofs.

16. That in answer to Paragraph 16, Defendant employees admit that a copy of the document was presented to Plaintiff's representative. That in response to the remaining allegations contained therein, Defendant employees state that the document which is known as Plaintiff's Exhibit C best speaks for itself as to its terms and conditions as they are set forth and denies that the characterization of the terms as set forth in Paragraph 16 are accurate or complete.

17. That in answer to Paragraph 17, Defendant employees admit the allegations contained therein. That Defendant employees state that because of the failure and refusal of Plaintiff's representative to negotiate directly with Defendant employees, it became necessary to have representatives of Local Union No. 332 become involved in the presentation of Exhibit C.

WHEREFORE, Defendant employees prays that this Honorable Court conclude and find:

1st. That Plaintiff has failed to state a cause of action against Defendant employees, and

2nd. That the Complaint be dismissed with prejudice against Defendant employees, and

3rd. That the Defendants have complied with the Temporary Injunctive Order requested by Plaintiff and have returned to work, and

4th. That Plaintiff, having obtained the Injunctive relief which it sought in the Complaint, is not entitled to any of the other relief requested in its Prayer for Relief, including monetary damages, costs and attorney fees, and

5th. That the Complaint be dismissed with prejudice the issues having become moot, and

6th. That Defendant employees be entitled to any other such relief as may be equitable and just.

Respectfully submitted,

(s)Hiram S. Grossman (P-14425)
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Telephone: (313) 235-2581

DATED: July 12, 1976

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

E. MOTION TO DISMISS

COMES NOW Defendants, Local 332 members by and through their attorneys, Draper, Daniel, Ruhala & Seymour, P.C., and moves this Honorable Court to dismiss the above-entitled causes of action for the following reasons:

1. That the striking employees of Automobile Carriers, Inc., F. J. Boutell Driveaway Co., Inc. and Complete Auto Transit, Inc. returned to work on and after June 21, 1976.

2. That the employees of F. J. Boutell Driveaway Co., Inc., Automobile Carriers, Inc., and Complete Auto Transit, Inc. are and have continuously remained at work since then.

3. That the only remaining issue in each of the three above-entitled causes of action is the issue of damages and that *United Steel Corporation* v *United Mine Workers Local 6321*, F 2d ; 94 LERM 2049 (3rd Cir Dec. 1976 (No. 76-1060) is dispositive of this issue in holding Plaintiff employers were not entitled to damages where the original dispute causing or precipitating the strike was not over an arbitrable issue.

4. That the above-entitled causes are moot, the employees having previously returned to work on June 21, 1976, and having remained working continuously thereafter and the *United Steel Corporation* decision being dispositive of the damage issue, the only remaining issue outstanding.

WHEREFORE, Defendants respectfully request that an Order be entered by this Court dismissing with prejudice Civil Action Numbers 76-40057; 76-40059 and 76-40060.

Respectfully submitted,

(s) Hiram S. Grossman
Attorney for Defendant
DRAPER, DANIEL, RUHALA & SEYMOUR, P.C.
717 South Grand Traverse
Flint, Michigan 48502
Telephone: 235-2581

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

F. PLAINTIFFS' RESPONSE TO MOTION TO DISMISS

COME NOW Plaintiffs, Complete Auto Transit, Inc., Automobile Carriers, Inc., and F. J. Boutell Driveaway Company, Inc. by and through their attorneys, Matheson, Bieneman, Parr, Schuler & Ewald, in response to Defendants' Motion to Dismiss state as follows:

1. Defendants returned to work on or about June 21, 1976, after being so ordered by this Court in the instant action.

2. Defendants have continued to work since the time of the entrance of the preliminary injunction by this Court.

3. Plaintiffs deny each and every allegation contained in paragraph 3 of the Motion to Dismiss.

4. Plaintiffs deny each and every allegation contained in paragraph 4 of the Motion to Dismiss.

WHEREFORE, Plaintiffs respectfully request that this Court dismiss Defendants' Motion to Dismiss for the reasons set forth in Plaintiffs' Memorandum in Opposition to Defendants' Motion to Dismiss.

Respectfully submitted,

(s) R. Ian Hunter, P-15279
C. John Holmquist, Jr., P-25996
Attorney for Plaintiffs
MATHESON, BIENEMAN, PARR,
SCHULER & EWALD
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Telephone: (313) 645-9600

Dated: April 13, 1977

(Affidavit of Service Omitted in Printing)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

G. MOTION FOR RECONSIDERATION

COME NOW Plaintiffs Complete Auto Transit, Inc., F. J. Boutell Driveaway Co., and Automobile Carriers, Inc., and move this Court to reconsider and amend its order of June 8, 1977 for the following reasons:

1. The maintenance of a damage action against the individual Defendants is not barred by federal labor law and does not violate congressional policy since Defendants acted solely as individuals in derogation of their collective bargaining representative and not as agents or representatives.

2. The dismissal of the preliminary injunction for the reasons stated is inconsistent with established federal labor law.

3. This Court's finding that the preliminary injunction was improper is inconsistent with federal labor law.

4. Given the significance of the issues involved herein, Plaintiffs request that this Court schedule oral argument on this Motion.

WHEREFORE, Plaintiffs urge this Court to modify its Order by reinstating the damage action against the individual Defendants and by reinstating the preliminary injunction.

Respectfully submitted,

(s) C. John Holmquist, Jr., P-25996
R. Ian Hunter, P-15279
Attorney for Plaintiffs
MATHESON, BIENEMAN, PARR,
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100 West Long Lake Road, Suite 102
Bloomfield Hills, Michigan 48013
Telephone: (313) 645-9600

Dated: June 17, 1977

(Affidavit of Service Omitted in Printing)

UNITED STATES OF AMERICA
IN THE DISTRICT COURT OF MICHIGAN
EASTERN DISTRICT
SOUTHERN DIVISION

(Title Omitted in Printing)
No. 76-40057 (Consolidated)

H. MEMORANDUM IN OPPOSITION TO MOTION FOR RECONSIDERATION

THE COURT CORRECTLY APPLIED *BUFFALO FORGE* IN DISSOLVING THE PRELIMINARY INJUNCTION AGAINST DEFENDANT EMPLOYEES.

In *Buffalo Forge* v *United Steelworkers of America*, 428 U.S. 94, S. Ct 3141 92 LRRM 3032 (1976), the Supreme Court focused its inquiry to what precipitated the strike. It asked the question whether the underlying dispute "causing" or "precipitating" the strike that was subject to the parties' contract grievance and arbitration procedure; it answered the question in the negative. In arriving at its determination, it examined what caused the strike. The Supreme Court found the strike was not over any dispute between the employer and union that was remotely subject to the arbitration provisions of the contract, it further found:

> "Neither its causes nor the issue underlying it were subject to the settlement procedures provided by the contract between the employer and respondents' at 92 LRRM 3036.

In the case at bar, the dispute that "caused" and "precipitated" the withholding of Defendants' services to their respective employers was the dispute with their union, the Local 332 and the International Brotherhood of Teamsters.

Relevant Pleadings, Charges, Findings or Opinions

Subsequent to the Supreme Court's issuance of *Buffalo Forge* decision, other corurts have had an opportunity to interpret and apply *Buffalo Forge* as it limited the use and availability of *Boys Markets, Inc.* v *Retail Clerks Local 770*, 398 US 235 1970, type injunction. In *U.S. Steel Corp.* v *United Mineworkers Local 6321,* F2d , 94 LRRM 2049, (3rd Cir. 1976) the Court focuses on the fact the strike was not "precipitated by" or "over" and arbitrable dispute between the employer and striking union. Additionally, it found that in order for the work stoppage to be enjoinable the dispute that precipitated the work stoppage must be subject to binding arbitration. Likewise, in *Southern Ohio Coal Co.* v *United Mineworkers,* F2d , 94 LRRM 2609 (6th Cir. 1977), the Court states *Boys Markets* permits a narrow exception to the section 4 Norris-La Guardia Act 19 USCA Sec. 104; and that narrow exception is where the strike is over a dispute both parties are contractually bound to arbitrate. The Court concludes the dispute "causing" or precipitating the strike was not an arbitrable dispute, and thus, an injunction would not lie.

The dispute "precipitating" or causing the strike in the case at bar did not have the purpose or effect of denying or evading an obligation to arbitrate or depriving the employer of his bargain that was spoken of in *Buffalo Forge* and in *Southern Ohio Coal*. The work stoppage was precipitated by a dispute continued unabated to and beyond the date this Court ordered Defendant employees back to work.

THE COURT CORRECTLY APPLIED THE LAW IN DISMISSING THE DAMAGE ACTION AGAINST THE INDIVIDUAL EMPLOYEE DEFENDANTS FOR THEIR ALLEGED BREACH OF THE COLLECTIVE BARGAINING AGREEMENT.

The Court's conclusion dismissing Plaintiff's claims for monetary relief against individual Defendants is well taken

and supported. In *Sinclair Oil Corporation* v *Oil Chemical & Atomic Workers Int'l Union* 452 F2d 49 (CA 7, 1971); 78 LRRM 2603, 2606, the Court stated:

> "We agree with Sinclair that the legislative history and Congressional debates show a concern for the promotion of industrial peace through making unions liable for breaches of their bargaining agreements and to encourage bargaining of no-strike clauses in the agreements. But we do not agree that Congress through a no-strike clause would be valueless unless the employer were authorized to recover damages against individual union members engaging in wildcat strikes. On the contrary, Congress, in the debates over Section 301, explicitly considered the problem of wildcat strikes and possible remedies. The remedies suggested were discharge and discipline. There is no indication that Congress considered Section 301 itself a remedy for an aggrieved employer. We think for us to do so would constitute an unwarranted expansion of that Section."
>
> "Moreover, Congress did consider the consquences of imposing financial responsibility on union members who engaged in non-tortious unprotected concerted activity as union members, in breach of a no-strike clause, and rejected it. We think the implication is that such employees are nct liable - under Section 301 - for such a breach even if the union did not authorize the strike."
>
> 'Neither Congress nor the Supreme Court has been persuaded by the argument, advanced here by Sinclair, that employers' recovery of damages against wildcat strikers would serve the national labor policy of encouraging peaceful settlements of labor disputes. As pointed out by Justice Brennan in deciding that injunctive relief will lie against a union for breach of a no-strike clause, and award of dam-

> ages is not an effective remedy for an employer faced with an illegal strike and "would only tend to aggravate industrial strife and delay an early resolution of the difficulties between an employer and union." *Boys Markets* v *Clerk Union*, 398 U.S. 235, 248, 74 LRRM 2257 (1970)." 78 LRRM 2603 at 2606

Subsequently, in *Eazor Express, Inc.*, v *International Brotherhood of Teamsters*, 520 F2d 951, 961 N. 5 (CA 3, 1975) 89 LRRM 3177, 3184, *Cert denied* 424 US 935, *rehearing denied* 425 US 908 (1976)), another opportunity was presented to decide the issue if individual employee Defendants should be held individually repsonsible for damages caused by an authorized work stoppage in breach of the collective bargaining agreement; the Court held individual employee Defendants should not be held liable. In arriving at its determination, the Court stated:

> "Although such an agreement is binding on the individual union members, the employer has no action for damages against them individually for their breach of the agreement where the union has been adjudged liable for the damages from the breach. Atkinson v. Sinclair Refining Co., 1962, 370 U.S. 238, 249, 50 LRRM 2433. Further, it has been held that the employer is in any event without a remedy for damages for breach of contract against individual union members who have engaged in a wildcat strike. *Sinclair Oil Corp.* v. *Oil, Chemical and Atomic Workers International Union*, (7 Cir. 1971), 452 F2d 49. 78 LRRM 2603."

The cases relied upon by Plaintiff in its brief to support its position are not well reasoned decisions. In *Alloy Cast Steel Co.* v *United Steelworkers of America*, F. Supp , 92 LRRM 2266 (N.D. Ohio 1976); F. Supp , 95 LRRM 2033 (N.D. Ohio 1977) you are not certain whether the Court held the way it did because the Defendant

employees breached the no strike provisions of the contract or because they violated the Court's Order by not returning to work as ordered. 95 LRRM 2033, 37 In *DuQuoin Packing Co.* v *Meat Cutters, et al of North America,* 321 F. Supp 1230 (ED - Ill 1971), 77 LRRM 2574, the Court unwarrantedly presumes that Section 301 only exempts Defendant employees form personal liability for Judgments against the union when they are acting or participating in a plan emanating from headquarters. The legislative history does not support the Court's conclusion that Section 301 was designed only to protect against a reoccurrence of the Danbury Hatters situation. The language of Section 301 neither suggests nor supports the conclusion individual Defendant employees can be held responsible for monetary damages even if they breach the collective bargaining agreements no-strike language.

CONCLUSION

For the foregoing reasons, Defendants urge this Court to deny Plaintiffs' Motion for Reconsideration and reaffirm the Court's Memorandum Opinion and Order dated June 8, 1977, in the above-entitled cause of action.

Respectfully submitted,

BY: (s) HIRAM S. GROSSMAN (P-14425)
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DATED: July 8, 1977

(Affidavit of Service Omitted in Printing)